

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11480 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHCHANDRA KAKARAM SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/01/2001

ORAL JUDGEMENT

#. Mr.Samir Dave and Mr.H.H.Patel, A.P.Ps. are present in the court. They were called upon to make submissions in this case. They stated they do not have papers of the case nor any instructions. Heard learned counsel for the

petitioner and respondent No.4.

#. So far as respondent No.4 is concerned, the representation filed by petitioner against the detention order has been decided and against this decision, the petitioner's counsel has not made any grievance. His contention is that the State Government has not decided his representation till date.

#. On 13th November, 2000, this matter was admitted and the following order has been passed:

Rule. Ld. AGP Mr.H.L.Jani waives service of Rule on behalf of respondent No.1 only. Respondent Nos.2, 3 and 4 be served. After due service, within four weeks matter may be notified for final hearing on any Thursday. Direct service is permitted.

On 30.11.2000, the matter was placed on Board on which date it was adjourned to 14.12.2000. On 14.12.2000, the matter was adjourned to 21.12.2000. On 21.12.2000, the matter was ordered to stand over to beyond vacation. Then this matter has come up for hearing in the court on 8.1.01 on which date Mr.Samir Dave, APP, put appearance for respondents No.1,2 and 3 and prayed for short adjournment to file reply to the special civil application. Time prayed for was granted and the matter was ordered to stand over for today. From these facts, it is clear that despite of sufficient time available to respondents No.1, 2 and 3, they have not cared to file reply to the special civil application. It is not so that the matter has not come up for hearing before today. After 19th October, 2000, the matter was placed on the Board for five times. On 8.1.01, as prayed for, time has also been granted by this court to respondents No.1, 2 and 3 to file reply to the special civil application. Still, reply has not been filed. From these facts, it can be conveniently inferred that either the officers of the impersonal machinery of the State of Gujarat are deliberately doing these things to extend favour to the detinue and make easy for him to get the order in his favour from this court or they are negligent, reckless and careless in discharge of their duties. However, it is a matter to be looked into by the State of Gujarat and not by this court.

#. Reply to the special civil application has not been filed by respondents No.1,2 and 3 and as such, this contention made by learned counsel for petitioner remains uncontroverted. On the facts also, there is nothing from

the side of respondents No.1,2 and 3 to show and establish that the representation filed by petitioner has been decided. By not deciding representation filed by petitioner his valuable right of filing representation and decision thereon under Article 22(5) of the Constitution has been denied. Only on this ground this petition succeeds and the same is allowed and the order of detention dated 6.10.2000 is quashed and set aside. Rule is made absolute. The petitioner shall be set free forthwith if he is not required in any other case.

#. It is a fit case where cost has to be awarded in favour of petitioner. But for this illegal detention order, the petitioner would not have come up before this court. Litigation heavily costs now a days and as what the learned counsel for the petitioner stated, he has charged Rs.5,000/= as his fees from the petitioner to provide professional services in this case and this amount has been paid by petitioner to him, leaving apart other expenses which would have been incurred by petitioner in filing this petition, atleast this amount of cost has to be awarded in favour of petitioner. Accordingly, the respondents No.1,2 and 3 are directed to pay Rs.5,000/- as costs of this petition. However, it is open to the Chief Secretary, State of Gujarat to hold inquiry and whosoever is found responsible for this non filing of reply to this special civil application, it is open to him to recover this amount of costs from the erring/ defaulting officer.

#. Before parting with the judgment, I am constrained to state that the officers of the State of Gujarat, an impersonal machinery, are not taking care of the detention matters which is clearly borne out from the facts of this case. It is unfortunate that despite of setting a handsome amount in the budget for litigation expenses by the State of Gujarat, this is the total defence which is put and assistance provided to it by its Officers. If the matters are to be decided without reply and without assistance of the Law Officers, then what for this huge amount has been kept for this purpose. The detention matters are not simple, casual and ordinary matters. These are very serious matters relating to the public safety and law and order in the country. These matters relate to public at large. Despite of this seriousness in the matters and taking them to be so serious at the stage of passing the detention orders, when the matter comes before the court, nobody bothers for these matters. Nobody cares to file reply to the special civil application and worst part of the proceedings is that though two Addl. Public Prosecutors

are present, none has file with him of the case. In detention matters, reply to the special civil application is a must and further an officer from the detaining authority should also remain present in the court along with the relevant record so that as and when something is considered necessary by the court to be examined, it can be perused and examined. When nobody bothers even at the first stage, who will care for the second stage. From the facts of the case, I am constrained to observe that there are two possibilities for this, namely, either it is because of recklessness, carelessness and total unmindful of their duties by the officers of this impersonal machinery or it is a deliberate attempt on the part of the concerned officers so as to make it easy for the detainee to get the detention order quashed and set aside by the court on this technical ground. This matter needs to be considered and monitored by a senior responsible officer of the State of Gujarat so that in future, recurrence of such situation may not be there in the court. A copy of this order be sent to the Chief Secretary, State of Gujarat.

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(sunil)